

sary or appropriate under the circumstances, the director shall take such actions under division (A), (B), or (C) of section 3734.13 of the Revised Code as he considers necessary or appropriate to protect human health or safety or the environment.

(E) The director shall conduct random inspections of licensed and closed sanitary landfills for explosive gas levels and to monitor the accuracy of the reports submitted pursuant to plans approved under division (A) of this section.

(F) The director shall adopt rules under Chapter 119. of the Revised Code prescribing standards for conducting the explosive gas monitoring required by division (A) of this section including, without limitation, standards governing the numbers, locations, and design and construction of monitoring wells; quality control procedures to be followed by persons conducting those evaluations to ensure the accuracy of the monitoring; the frequency for sampling the monitoring wells, which shall be at least quarterly, except as otherwise provided in this division; and the frequency of reporting monitoring results to the director and board of health. The rules shall require that, in the instance of closed sanitary landfills, explosive gas monitoring be conducted for the period of twenty years after closure or for such other period as the director considers necessary or appropriate. Such explosive gas monitoring shall be conducted quarterly during each of the five years immediately following closure of the landfills and semiannually thereafter. If such semiannual sampling shows that the methane limits set in division (C) of this section are exceeded, sampling may be resumed at a frequency determined by the director.

(G) The remedy provided by division (D) of this section is cumulative and concurrent with any other remedy provided in this chapter or Chapter 3704. of the Revised Code, and the existence or exercise of one remedy does not prevent the exercise of any other.

HISTORY: 142 v H 65. Eff 5-31-88.

#### Cross-References to Related Sections

Penalty, RC § 3734.99.

**§ 3734.05** Licensing requirements; application for installation and operation permit; hazardous waste facility board created; hearings and orders; appeal.

(A)(1) Except as provided in division (A)(4) of this section, no person shall operate or maintain a solid waste facility without a license issued by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code.

During the month of December, but before the first day of January of the next year, every person

proposing to continue to operate an existing solid waste facility shall procure a license to operate the facility for that year from the board of health of the health district in which the facility is located or, if the health district is not on the approved list under section 3734.08 of the Revised Code, from the director. The application for such a license shall be submitted to the board of health or to the director, as appropriate, on or before the last day of September of the year preceding that for which the license is sought. In addition to the application fee prescribed in division (A)(2) of this section, a person who submits an application after that date shall pay an additional ten per cent of the amount of the application fee for each week that the application is late. Late payment fees accompanying an application submitted to the board of health shall be credited to the special fund of the health district created in division (B) of section 3734.06 of the Revised Code and late payment fees accompanying an application submitted to the director shall be credited to the general revenue fund. A person who has received a license, upon sale or disposition of a solid waste facility, may, upon consent of the board of health and the director, have the license transferred to another person. The board of health or the director may include such terms and conditions in a license or revision to a license as are appropriate to ensure compliance with this chapter and rules adopted under it. The terms and conditions may establish the authorized maximum daily waste receipts for the facility. Limitations on maximum daily waste receipts may be specified in either tons or in cubic yards of volume based upon a conversion factor of three cubic yards per ton for compacted wastes generally and one cubic yard per ton for baled wastes. Terms and conditions included in a license or revision to a license by a board of health shall be consistent with, and pertain only to the subjects addressed in, the rules adopted under division (A) of section 3734.02 and division (D) of section 3734.12 of the Revised Code.

(2)(a) Except as provided in division (A)(2)(b) of this section, each person proposing to open a new solid waste facility or to modify an existing solid waste facility shall submit an application for a permit with accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code at least two hundred seventy days before proposed operation of the facility and shall concurrently make application for a license with the board of health of the health district in which the proposed facility is to be located.

(b) On and after the effective date of the rules adopted under division (A) of section 3734.02 of the Revised Code and division (D) of section 3734.12 of the Revised Code governing solid waste



the facility to the director for approval within six months after issuance of the order, cease accepting solid wastes for disposal or transfer at the facility, and commence closure of the facility not later than one year after issuance of the order. If the director determines that closure of the facility within that one-year period would result in the unavailability of sufficient solid waste management facility capacity within the county or joint solid waste management district in which the facility is located to dispose of or transfer the solid waste generated within the district, he may in his order of denial or disapproval postpone commencement of closure of the facility for such period of time as he finds necessary for the board of county commissioners or directors of the district to secure access to or for there to be constructed within the district sufficient solid waste management facility capacity to meet the needs of the district, provided that the director shall certify in his order that postponing the date for commencement of closure will not endanger ground water or any property surrounding the facility, allow methane gas migration to occur, or cause or contribute to any other type of environmental damage.

If an emergency need for disposal capacity that may affect public health and safety exists as a result of closure of a facility under division (A)(6) of this section, the director may issue an order designating another solid waste facility to accept the wastes that would have been disposed of at the facility to be closed.

(7) If the director determines that standards more stringent than those applicable in rules adopted under division (A) of section 3734.02 of the Revised Code and division (D) of section 3734.12 of the Revised Code, or standards pertaining to subjects not specifically addressed by those rules, are necessary to ensure that a solid waste facility constructed at the proposed location will not cause a nuisance, cause or contribute to water pollution, or endanger public health or safety, he may issue a permit for the facility with such terms and conditions as he finds necessary to protect public health and safety and the environment. If the director issues a permit, he shall state in the order issuing it the specific findings supporting each such term or condition.

(B)(1) Each person who is engaged in the business of treating infectious wastes for profit at a treatment facility located off the premises where the wastes are generated that is in operation on August 10, 1988 and who proposes to continue operating the facility shall submit to the board of health of the health district in which the facility is located an application for a license to operate the facility.

Thereafter, no person shall operate or maintain an infectious waste treatment facility without a li-

cense issued by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code.

(2)(a) During the month of December, but before the first day of January of the next year, every person proposing to continue to operate an existing infectious waste treatment facility shall procure a license to operate the facility for that year from the board of health of the health district in which the facility is located or, if the health district is not on the approved list under section 3734.08 of the Revised Code, from the director. The application for such a license shall be submitted to the board of health or to the director, as appropriate, on or before the last day of September of the year preceding that for which the license is sought. In addition to the application fee prescribed in division (B)(2)(c) of this section, a person who submits an application after that date shall pay an additional ten per cent of the amount of the application fee for each week that the application is late. Late payment fees accompanying an application submitted to the board of health shall be credited to the special infectious waste fund of the health district created in division (C) of section 3734.06 of the Revised Code and late payment fees accompanying an application submitted to the director shall be credited to the general revenue fund. A person who has received a license, upon sale or disposition of an infectious waste treatment facility, may, upon consent of the board of health and the director, have the license transferred to another person. The board of health or the director may include such terms and conditions in a license or revision to a license as are appropriate to ensure compliance with the infectious waste provisions of this chapter and rules adopted under them.

(b) Each person proposing to open a new infectious waste treatment facility or to modify an existing infectious waste treatment facility shall submit an application for a permit with accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to section 3734.021 [3734.02.1] of the Revised Code two hundred seventy days before proposed operation of the facility and shall concurrently make application for a license with the board of health of the health district in which the proposed facility is to be located.

(c) Each application for a permit under division (B)(2)(b) of this section shall be accompanied by a nonrefundable application fee of four hundred dollars that shall be credited to the general revenue fund. Each application for an annual license under division (B)(2)(a) of this section shall be accompanied by a nonrefundable application fee of one hundred dollars. If the application for an annual

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license is submitted to a board of health on the ap-  
proved list under section 3734.08 of the Revised  
Code, the application fee shall be credited to the  
special infectious waste fund of the health district  
created in division (C) of section 3734.06 of the Re-  
vised Code. If the application for an annual license  
is submitted to the director, the application fee  
shall be credited to the general revenue fund. If a  
permit or license is issued, the amount of the appli-  
cation fee paid shall be deducted from the amount  
of the permit fee due under division (F) of section  
3745.11 of the Revised Code or the amount of the  
license fee due under division (C) of section  
3734.06 of the Revised Code.

(d) The owner or operator of any infectious  
waste treatment facility that commenced operation  
on or before July 1, 1968, shall submit to the direc-  
tor an application for a permit with accompanying  
engineering detail plans, specifications, and infor-  
mation regarding the facility and its method of op-  
eration for approval under rules adopted under sec-  
tion 3734.021 [3734.02.1] of the Revised Code in  
accordance with the following schedule:

(i) Not later than December 24, 1988, if the fa-  
cility is located in Delaware, Greene, Guernsey,  
Hamilton, Madison, Mahoning, Ottawa, or Vinton  
county;

(ii) Not later than March 24, 1989, if the facility  
is located in Champaign, Clinton, Columbiana,  
Huron, Paulding, Stark, or Washington county, or  
is located in the city of Brooklyn, Cuyahoga  
Heights, or Parma in Cuyahoga county;

(iii) Not later than June 24, 1989, if the facility  
is located in Adams, Auglaize, Coshocton, Darke,  
Harrison, Lorain, Lucas, or Summit county or is  
located in Cuyahoga county outside the cities of  
Brooklyn, Cuyahoga Heights, and Parma;

(iv) Not later than September 24, 1989, if the  
facility is located in Butler, Carroll, Erie, Lake,  
Portage, Putnam, or Ross county;

(v) Not later than December 24, 1989, if the fa-  
cility is located in a county not listed in divisions  
(B)(2)(d)(i) to (iv) of this section.

The owner or operator of an infectious waste  
treatment facility required to submit a permit ap-  
plication under division (B)(2)(d) of this section is  
not required to pay any permit application fee un-  
der division (B)(2)(c) of this section, or permit fee  
under division (F) of section 3745.11 of the Revised  
Code, with respect thereto unless the owner or op-  
erator also proposes to modify the facility.

(e) The director may issue an order in accord-  
ance with Chapter 3745. of the Revised Code to the  
owner or operator of an infectious waste treatment  
facility requiring the person to submit to the direc-  
tor updated engineering detail plans, specifications,  
and information regarding the facility and its  
method of operation for approval under rules  
adopted under section 3734.021 [3734.02.1] of the

Revised Code if, in the director's judgment, condi-  
tions at the facility constitute a substantial threat to  
public health or safety or are causing or contribut-  
ing to or threatening to cause or contribute to air or  
water pollution or soil contamination. Any person  
who receives such an order shall submit the up-  
dated engineering detail plans, specifications, and  
information to the director within one hundred  
eighty days after the effective date of the order.

(f) The director shall act upon an application  
submitted under division (B)(2)(d) of this section  
and any updated engineering plans, specifications,  
and information submitted under division (B)(2)(e)  
of this section within one hundred eighty days after  
receiving them. If the director denies any such per-  
mit application or disapproves any such updated  
engineering plans, specifications, and information,  
he shall include in the order denying the applica-  
tion or disapproving the plans the requirement that  
the owner or operator cease accepting infectious  
wastes for treatment at the facility.

(3) Division (B) of this section does not apply to  
an infectious waste treatment facility that meets  
any of the following conditions:

(a) Is owned or operated by the generator of the  
wastes and exclusively treats, by methods, tech-  
niques, and practices established by rules adopted  
under division (C)(1) or (3) of section 3734.021  
[3734.02.1] of the Revised Code, wastes that are  
generated at any premises owned or operated by  
that generator regardless of whether the wastes are  
generated on the same premises where the genera-  
tor's treatment facility is located or, if the generator  
is a hospital as defined in section 3727.01 of the  
Revised Code, infectious wastes generated by a gen-  
erator who produces fewer than fifty pounds of in-  
fectious wastes during any one month and who has  
staff privileges at that hospital;

(b) Holds a license issued under section 4717.17  
and a permit issued under Chapter 3704. of the  
Revised Code;

(c) Treats or disposes of dead animals or parts  
thereof, or the blood of animals, and is subject to  
any of the following:

(i) Inspection under the "Federal Meat Inspec-  
tion Act," 81 Stat. 584 (1967), 21 U.S.C. 603, as  
amended;

(ii) Chapter 918. of the Revised Code;

(iii) Chapter 953. of the Revised Code.

Nothing in division (B) of this section requires a  
facility that holds a license issued under division  
(A) of this section as a solid waste facility and that  
also treats infectious wastes by the same method,  
technique, or process to obtain a license under divi-  
sion (B) of this section as an infectious waste treat-  
ment facility. However, the solid waste facility li-  
cense for the facility shall include the notation that  
the facility also treats infectious wastes.

(C) Except as provided in division (H) of this sec-

tion, or unless the facility will operate or is operating in accordance with division (F)(5) of section 3734.02 of the Revised Code, a person who proposes to establish or operate a hazardous waste facility shall submit an application for a hazardous waste facility installation and operation permit and accompanying detail plans, specifications, and such information as the director may require to the environmental protection agency, except as provided in division (E)(2) of this section, at least one hundred eighty days before the proposed beginning of operation of the facility. The applicant shall notify by certified mail the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located of the submission of the application within ten days after the submission or at such earlier time as the director may establish by rule. If the application is for a proposed new or modified hazardous waste disposal or thermal treatment facility, the applicant also shall give actual notice of the general design and purpose of the facility to the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be or is located at least ninety days before the permit application is submitted to the environmental protection agency.

(D)(1) There is hereby created the hazardous waste facility board, composed of the director of environmental protection who shall serve as chairperson, the director of natural resources, and the chairman of the Ohio water development authority, or their respective designees, and one chemical engineer and one geologist who shall each be employed by a state university as defined in section 3345.011 of the Revised Code. The chemical engineer and geologist shall each be appointed by the governor, with the advice and consent of the senate, for a term of two years. The chemical engineer and geologist shall each receive as compensation five thousand dollars per year, plus expenses necessarily incurred in the performance of their duties.

The board shall not issue any final order without the consent of at least three members.

(2) The hazardous waste facility board shall do both of the following:

(a) Pursuant to Chapter 119. of the Revised Code, adopt rules governing procedure to be followed in hearings before the board;

(b) Approve or disapprove applications for a hazardous waste facility installation and operation permit.

(3) Upon receipt of the completed application for a hazardous waste facility installation and operation permit and a preliminary determination by the staff of the environmental protection agency that the application appears to comply with agency rules and to meet the performance standards set forth in divisions (D), (I), and (J) of section 3734.12 of the Revised Code, the director of environmental

protection shall transmit the application to the hazardous waste facility board, which shall do all of the following:

(a) Promptly fix a date for a public hearing on the application, not fewer than sixty or more than ninety days after receipt of the completed application. At the public hearing, any person may submit written or oral comments or objections to the approval or disapproval of the application. A representative of the applicant who has knowledge of the location, construction, operation, closure, and post-closure care, if applicable, of the facility shall attend the public hearing in order to respond to comments or questions concerning the facility directed to him by the presiding officer.

(b) Give public notice of the date of the public hearing and a summary of the application in a newspaper having general circulation in the county in which the facility is proposed to be located. The notice shall contain, at a minimum, the date, time, and location of the public hearing, and shall include the location and street address of, or the nearest intersection to, the proposed facility, a description of the proposed facility, and the location where copies of the application, a short statement by the applicant of the anticipated environmental impact of the facility, and a map of the facility are available for inspection.

(c) Promptly fix a date for an adjudication hearing, not less than ninety or more than one hundred twenty days after receipt of the completed application, at which hearing the board shall hear and decide all disputed issues between the parties respecting the approval or disapproval of the application.

(4) The parties to any adjudication hearing before the board upon a completed application shall be the following:

(a) The applicant;

(b) The staff of the environmental protection agency;

(c) The board of county commissioners of the county, the board of township trustees of the township, and the chief executive officer of the municipal corporation in which the facility is proposed to be located;

(d) Any other person who would be aggrieved or adversely affected by the proposed facility and who files a petition to intervene in the adjudication hearing not later than thirty days after the date of publication of the notice required in division (D)(3)(b) of this section, if the petition is granted by the board for good cause shown. The board may allow intervention by other aggrieved or adversely affected persons up to fifteen days prior to the date of the adjudication hearing for good cause shown when the intervention would not be unduly burdensome to or cause a delay in the permitting process.

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(6) The board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines as follows:

(b) That the facility complies with the director's hazardous waste standards adopted pursuant to section 3734.12 of the Revised Code;

(c) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations:

(d) That the facility represents the minimum risk of all of the following:

- (i) Contamination of ground and surface waters;
- (ii) Fires or explosions from treatment, storage, or disposal methods;

(iii) Accident during transportation of hazardous waste to or from the facility;

(iv) Impact on the public health and safety;

(v) Air pollution;

(vi) Soil contamination.

(e) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters;

(f) That if the owner of the facility, the operator of the facility, or any other person in a position with the facility from which he may influence the installation and operation of the facility has been involved in any prior activity involving transportation, treatment, storage, or disposal of hazardous waste, that person has a history of compliance with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters, the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C. 6921, as amended, and all regulations promulgated under it, and similar laws and rules of other states if any such prior operation was located in another state that demonstrates sufficient reliability, expertise, and competency to operate a hazardous waste facility under the applicable provisions of Chapters 3704., 3734., and 6111. of the Revised Code, the applicable rules and standards adopted under those chapters, and terms and conditions of a hazardous waste facility installation and operation permit,

given the potential for harm to the public health and safety and the environment that could result from the irresponsible operation of the facility;

(g) That the active areas within a new hazardous waste facility where acute hazardous waste as listed in 40 C.F.R. 261.33 (e), as amended, or organic waste that is toxic and is listed under 40 C.F.R. 261, as amended, is being stored, treated, or disposed of and where the aggregate of the storage design capacity and the disposal design capacity of all hazardous waste in those areas is greater than two hundred and fifty thousand gallons, are not located or operated within any of the following:

(i) Two thousand feet of any residence, school, hospital, jail, or prison;

(ii) Any naturally occurring wetland;

(iii) Any flood hazard area if the applicant cannot show that the facility will be designed, constructed, operated, and maintained to prevent washout by a one hundred-year flood or that procedures will be in effect to remove the waste before flood waters can reach it.

Division (D)(6)(g) of this section does not apply to the facility of any applicant who demonstrates to the board that the limitations specified in that division are not necessary because of the nature or volume of the waste and the manner of management applied, the facility will impose no substantial danger to the health and safety of persons occupying the structures listed in division (D)(6)(g)(i) of this section, and the facility is to be located or operated in an area where the proposed hazardous waste activities will not be incompatible with existing land uses in the area.

(h) That the facility will not be located within the boundaries of a state park established or dedicated under Chapter 1541. of the Revised Code, a state park purchase area established under section 1541.02 of the Revised Code, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the secretary of the United States department of the interior, located in this state, or any candidate area located in this state identified for potential inclusion in the national park system in the edition of the "national park system plan" submitted under paragraph (b) of section 8 of "The Act of August 18, 1970," 84 Stat. 825, 16 U.S.C. 1a-5, as amended, current at the time of filling of the application for the permit, unless the facility will be used exclusively for the storage of hazardous waste generated within the park or recreation area in conjunction with the operation of the park or recreation area. Division (C)(6)(h) of this section does not apply to the facility of any applicant for modification of a permit unless the modification application proposes to increase the land area included in the facility or to increase the quantity of

hazardous waste that will be treated, stored, or disposed of at the facility.

In rendering a decision upon an application for a hazardous waste facility installation and operation permit, the board shall issue a written order and opinion, which shall include the specific findings of fact and conclusions of law which support the board's approval or disapproval of the application.

If the board approves an application for a hazardous waste facility installation and operation permit, as a part of its written order, it shall issue the permit, upon such terms and conditions as the board finds are necessary to ensure the construction and operation of the hazardous waste facility in accordance with the standards of this section.

(7) Any party adversely affected by an order of the hazardous waste facility board may appeal the order and decision of the board to the court of appeals of Franklin county. An appellant shall file with the board a notice of appeal, which shall designate the order appealed from. A copy of the notice also shall be filed by the appellant with the court, and a copy shall be sent by certified mail to each party to the adjudication hearing before the board. Such notices shall be filed and mailed within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of the order and fix its terms.

Within twenty days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including any transcript of the testimony and any other evidence that has been submitted before the board. The expense of preparing and transcribing the record shall be taxed as a part of the costs of the appeal. The appellant, other than the state or a political subdivision, an agency of either, or any officer of the appellant acting in his representative capacity, shall provide security for costs satisfactory to the court considering the respective interests of the parties and the public interest. Upon demand by a party, the board shall furnish, at the cost of the party requesting it, a copy of the record. If the complete record is not filed within the time provided for in this section, any party may apply to the court to have the case docketed, and the court shall order the record filed.

In hearing the appeal, the court is confined to the record as certified to it by the board. The court may grant a request for the admission of additional

evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the board.

The court shall affirm the order complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such findings, it shall reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken by any party to the appeal pursuant to the Rules of Practice of the Supreme Court and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(E)(1) Upon receipt of a completed application, the board shall issue a hazardous waste facility installation and operation permit for a hazardous waste facility subject to the requirements of divisions (D)(6) and (7) of this section and all applicable federal regulations if the facility for which the permit is requested satisfies all of the following:

(a) Was in operation immediately prior to October 9, 1980;

(b) Was in substantial compliance with applicable statutes and rules in effect immediately prior to October 9, 1980, as determined by the director;

(c) Demonstrates to the board that its operations after October 9, 1980, comply with applicable performance standards adopted by the director pursuant to division (D) of section 3734.12 of the Revised Code;

(d) Submits a completed application for a permit under division (C) of this section within six months after October 9, 1980.

The board shall act on the application within twelve months after October 9, 1980.

(2) A hazardous waste facility that was in operation immediately prior to October 9, 1980, may continue to operate after that date if it does all of the following:

(a) Complies with performance standards adopted by the director pursuant to division (D) of section 3734.12 of the Revised Code;

(b) Submits a completed application for a hazardous waste installation and operation permit under division (C) of this section within six months after October 9, 1980;

(c) Obtains the permit under division (D) of this section within twelve months after October 9, 1980.

(3) No political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or other condition for the



d that the additional evidence and could not with reasonable ascertainment prior to the 1.

the order complained of in consideration of the evidence additional evidence as the order is supported by substantial evidence and is. In the absence of such vacate, or modify the order ruling as is supported by substantial evidence and is. The judgment of the court is unless reversed, vacate. Such appeals may be the appeal pursuant to the Supreme Court and, to the with those rules, Chapter e.

completed application, hazardous waste facility installation and operation permit for a hazardous waste facility in accordance with the requirements of division (D) of this section and all applicable rules for the facility for which the permit is issued. Immediately prior to October 9, 1980,

compliance with applicable rules immediately prior to October 9, 1980, as determined by the director; the board that its operations comply with applicable rules as determined by the director pursuant to division 3734.12 of the Revised Code;

an application for a permit renewal submitted to the director within six months of the expiration date of the existing permit;

an application within six months of the expiration date of the existing permit;

an application that was in operation on October 9, 1980, may continue to operate on that date if it does all of the following:

performance standards pursuant to division (D) of this section of the Revised Code;

an application for a hazardous waste facility installation and operation permit submitted to the director within six months of the expiration date of the existing permit;

under division (D) of this section of the Revised Code, on or after October 9, 1980,

the provisions of this state shall remain in effect until the expiration of the permit or other approval, condition, or other condition for the

construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to this chapter, nor shall any political subdivision adopt or enforce any law, ordinance, or rule that in any way alters, impairs, or limits the authority granted in the permit.

(4) After the issuance of a hazardous waste facility installation and operation permit by the board, each hazardous waste facility shall be subject to the rules and supervision of the director of environmental protection during the period of its operation, closure, and post-closure care, if applicable.

(F) Upon approval of the board in accordance with divisions (D) and (E) of this section, the board may issue a single hazardous waste facility installation and operation permit to a person who operates two or more adjoining facilities where hazardous waste is stored, treated, or disposed of if the application includes detail plans, specifications, and information on all facilities. For the purposes of this section, "adjoining" means sharing a common boundary, separated only by a public road, or in such proximity that the director determines that the issuance of a single permit will not create a hazard to the public health or safety or the environment.

(G) No person shall falsify or fail to keep or submit any plans, specifications, data, reports, records, manifests, or other information required to be kept or submitted to the director or to the hazardous waste facility board by this chapter or the rules adopted under it.

(H)(1) Each person who holds an installation and operation permit issued under this section and who wishes to obtain a permit renewal shall submit a completed application for an installation and operation permit renewal and any necessary accompanying general plans, detail plans, specifications, and such information as the director may require to the director no later than one hundred eighty days prior to the expiration date of the existing permit or upon a later date prior to the expiration of the existing permit if the permittee can demonstrate good cause for the late submittal. The director shall consider the application and accompanying information, inspection reports of the facility, results of performance tests, a report regarding the facility's compliance or noncompliance with the terms and conditions of its permit and rules adopted by the director under this chapter, and such other information as is relevant to the operation of the facility and shall issue a draft renewal permit or a notice of intent to deny the renewal permit. The director, in accordance with rules adopted under this section or with rules adopted to implement Chapter 3745. of the Revised Code, shall give public notice of the application and draft renewal permit or notice of intent to deny the renewal permit, provide for the

opportunity for public comments within a specified time period, schedule a public meeting in the county in which the facility is located if significant interest is shown, and give public notice of the public meeting.

(2) Within sixty days after the public meeting or close of the public comment period, the director, without prior hearing, shall issue or deny the renewal permit in accordance with Chapter 3745. of the Revised Code. The director shall not issue a renewal permit unless he determines that the facility under the existing permit has a history of compliance with this chapter, rules adopted under it, the existing permit, or orders entered to enforce such requirements that demonstrates sufficient reliability, expertise, and competency to operate the facility henceforth under this chapter, rules adopted under it, and the renewal permit. If the director approves an application for a renewal permit, he shall issue the permit subject to the payment of the annual permit fee required under division (E) of section 3734.02 of the Revised Code and upon such terms and conditions as he finds are reasonable to ensure that continued operation, maintenance, closure, and post-closure care of the hazardous waste facility are in accordance with the rules adopted under section 3734.12 of the Revised Code.

(3) An installation and operation permit renewal application submitted to the director that also contains or would constitute a revision application shall be acted upon by the director in accordance with division (I) of this section in the same manner as a revision application. In approving or disapproving the renewal portion of a permit renewal application containing a revision application, the director shall apply the criteria established under division (H)(2) of this section.

(4) An installation and operation permit renewal application submitted to the director that also contains or would constitute a modification application shall be acted upon by the hazardous waste facility board in accordance with division (I) of this section in the same manner as a modification application.

(5) An application for renewal or revision of a permit that does not contain an application for a modification shall not be subject to division (D) of this section.

(I)(1) As used in this section, "modification" means a change or alteration to a hazardous waste facility or its operations that impacts on the siting criteria contained in division (D)(6) of this section. "Revision" means any change or alteration to a hazardous waste facility or its operations that is not a modification.

(2) A hazardous waste facility installation and operation permit may be modified or revised at the request of the director or upon the written request



of the permittee only if any of the following applies:

(a) The permittee desires to accomplish alterations, additions, or deletions to the permitted facility or to undertake alterations, additions, deletions, or activities that are inconsistent with or not authorized by the existing permit;

(b) New information or data justify permit conditions in addition to or different from those in the existing permit;

(c) The standards, criteria, or rules upon which the existing permit is based have been changed by new, amended, or rescinded standards, criteria, or rules, or by judicial decision after the existing permit was issued, and the change justifies permit conditions in addition to or different from those in the existing permit;

(d) The permittee proposes to transfer the permit to another person.

(3) A written request for a modification or revision from the permittee shall be submitted to the director and shall contain such information as is necessary to support the request. Any request for a modification shall be subject to the procedures established in division (D) of this section for permit applications.

(4)(a) The hazardous waste facility board shall approve or disapprove an application for a modification, or that portion of a permit renewal application that constitutes a modification application, of a hazardous waste facility installation and operation permit in accordance with division (D) of this section. In approving or disapproving the renewal portion of a permit renewal application containing a modification application as provided in division (H)(4) of this section, the board shall apply the criteria established under division (H)(2) of this section. No aspect of the permitted facility or its operations that is not being modified shall be subject to review by the board under division (D) of this section.

(b) The director shall consider a revision application and shall issue a draft revised permit or a notice of intent to deny the revision. The director, in accordance with rules adopted under this section or with rules adopted to implement Chapter 3745. of the Revised Code, shall give public notice of the application and draft revised permit or notice of intent to deny the revision, provide for the opportunity for public comments within a specified time period, schedule a public meeting in the county in which the facility is located if significant interest is shown, and give public notice of the public meeting. Within sixty days after the public meeting or the close of the public comment period, the director, without prior hearing, shall issue a revised permit or deny the revision application in accordance with Chapter 3745. of the Revised Code.

(c) If the director determines that all or part of an application for revision constitutes an application for modification or if the director determines

that all or part of an application for modification constitutes an application for revision, he shall so inform the applicant and treat the application accordingly.

(J) The director shall adopt, and may modify, suspend, or rescind, rules in accordance with Chapter 119. of the Revised Code in order to implement divisions (H) and (I) of this section.

**HISTORY:** 132 v H 623 (Eff 12-14-67); 134 v S 397 (Eff 10-23-72); 137 v S 266 (Eff 3-19-79); 138 v S 269 (Eff 10-9-80); 140 v H 506 (Eff 8-1-84); 140 v H 576 (Eff 10-31-84); 141 v H 412 (Eff 3-17-87); 141 v H 428 (Eff 12-23-86); 142 v S 243 (Eff 8-10-88); 142 v H 592 (Eff 6-24-88); 142 v S 76 (Eff 12-21-88); 143 v H 656. Eff 4-18-90.

See provisions, § 7 of HB 592 (142 v —) following RC § 3734.02.

#### Cross-References to Related Sections

Penalty, RC § 3734.99.

Definitions, RC § 3734.01.

Evaluations, reports, procedures for abatement of hazardous conditions at sanitary landfill, RC § 3734.04.1.

Fees on disposal of hazardous waste, RC § 3734.18.

Registration certificate for transporters, RC § 3734.02.2.

Rules governing the operation of solid waste facilities, RC § 3734.02.

Rules and standards for generators and transporters of infectious solid wastes, RC § 3734.02.1.

#### Ohio Administrative Code

Ohio hazardous waste facility board; general provisions. OEPA: OAC ch. 3734-1.

#### Text Discussion

Health regulations. 3 Ellis § 9.30

Zoning regulations. 3 Ellis § 10.2

#### Research Aids

##### Licenses:

O-Jur3d: Envirn Pro §§ 110, 114, 123, 130-132

Am-Jur2d: Health § 25; Poll Cont § 250

##### Modification or revision of permit:

O-Jur3d: Envirn Pro § 132.5.

#### Law Review

Development of environmental law through the administrative process. Barry H. Smith. 4 CapitalULRev 203 (1975).

The discovery rule: fairness in toxic tort statutes of limitations. Bill Shaw, Pat Cahon, and Malcolm Myers. 33 ClevStLRev 491 (1984-85).

Garbage, the police power, and the commerce clause. Note. 8 CapitalULRev 613 (1979).

The hazardous waste regulatory programs and the federal common law of nuisance: a confusion between preemption and codification. Note. 45 OSLJ 791 (1984).

Municipal home rule in Ohio: a mechanism for local regulation of hazardous waste facilities. Comment. 16 ToledoLRev 553 (1985).

Nuclear waste disposal: a federal and state problem. Comment. 65 KyLJ 917 (1977).

A private nuisance approach to hazardous waste disposal sites. Comment. 7 ONorthLRev 86 (1980).

Remedies for hazardous waste injuries. Comment. 11 NoKyLRev 435 (1984).

S.B. 269: the impact of federal legislation on Ohio's hazardous waste disposal program. Note. 7 UDayLRev 567 (1982).

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38 v S 268 (Eff 10-9-80); 140 v H  
Eff 10-31-84); 141 v H 412 (Eff 3-  
86); 142 v S 243 (Eff 8-10-88); 142  
6 (Eff 12-21-88); 143 v H 656. Eff

592 (142 v —) following RC §

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82 DickinsonLRev 325 (1977-78).

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Rev 425-578 (1980).

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ClevStLRev 1 (1984-85).

### CASE NOTES AND OAG

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1. (1984) A federal court should abstain from deciding a constitutional challenge to the hazardous waste facility law since the case presents basic matters of state policy complicated by nonlegal considerations of a local nature and where the state has a unified scheme for review of its administrative orders: *J.V. Peters & Co. v. Hazardous Waste Fac. App. Bd.*, 596 FSupp 1556 (S.D.).

2. (1986) A municipal corporation is not required to enter into the regulation of hazardous waste sites unless it is expressly required to do so by law or it has otherwise voluntarily chosen to regulate them: *Singleton v. Hamilton*, 33 OApp3d 187, 515 NE2d 8.

3. (1986) To the extent a municipal corporation permissibly enacts police power legislation respecting hazardous waste disposal and handling, it makes itself involved in the arena of hazardous waste disposal and subjects itself to liability if it fails to enforce its regulations or ordinances as a reasonable person would. (Per lead opinion of Jones, J.): *Singleton v. Hamilton*, 33 OApp3d 187, 515 NE2d 8.

4. (1986) Procedure for approval of an application for a permit under RC § 3734.05, construed: *West Virginia v. Hazardous Waste Facility Approval Bd.*, 28 OS3d 83, 28 OBR 179, 502 NE2d 625.

5. (1986) A municipal police power ordinance which does not alter, impair, or limit the operation of a state-licensed hazardous waste facility may be found not to be in conflict with RC Chapter 3734. (Clermont Environmental Reclamation Co. v. Wiederhold [1982], 2 OS3d 44, construed.): *Fondessy Enterprises, Inc. v. Oregon*, 23 OS3d 213, 23 OBR 372, 492 NE2d 797.

6. (1986) The authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority: *Fondessy Enterprises, Inc. v. Oregon*, 23 OS3d 213, 23 OBR 372, 492 NE2d 797.

7. (1986) Where state laws and municipal ordinances concerning the monitoring of hazardous waste landfill facilities located within the corporate limits of the city do not conflict, the state and municipality have concurrent authority under their respective police powers to enforce their respective directives within the corporate limits of the city: *Fondessy Enterprises, Inc. v. Oregon*, 23 OS3d 213, 23 OBR 372, 492 NE2d 797.

8. (1982) Revised Code § 3734.05(D)(3), which prohibits any political subdivision of the state from requiring any additional zoning or other approval for the construction and operation of a hazardous waste facility autho-

rized by a hazardous waste facility permit issued pursuant to RC Chapter 3734., is a "law, of a general nature" of the state having uniform operation throughout the state and, as such, is not violative of OConst art II, § 26, and is therefore constitutional: *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 OS3d 44, 2 OBR 587, 442 NE2d 1278.

9. (1982) Revised Code § 3734.05(D)(3) was enacted by the general assembly for the protection of the environment of the state and for the health and safety of its citizens as a reasonable exercise of the state's general police power. Such law being a "general law" to carry out these state-wide legislative goals, municipalities are subject to its provisions notwithstanding the provisions of OConst art XVIII, § 3: *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 OS3d 44, 2 OBR 587, 442 NE2d 1278.

10. (1973) A writ of mandamus will not issue to compel a district board of health to issue a license to operate a solid waste disposal site or facility pursuant to RC Chapter 3734.: *State ex rel. Benton's Village Service v. Usher*, 34 OS2d 59, 63 OO2d 90, 295 NE2d 657.

11. (1984) Chapter 551. of the Codified Ordinances of the city of Cleveland is in conflict with RC Chapter 3734. and is thus unconstitutional: *Harvard Refuse, Inc. v. Cleveland*, 18 OApp3d 80, 18 OBR 395, 481 NE2d 656.

12. (1984) Section 9607, Title 42, U.S. Code, establishes strict liability for three categories of "responsible persons": (1) present and former owners of hazardous waste disposal sites; (2) transporters of hazardous wastes; and (3) those who arrange for the transport or disposal of hazardous wastes: *Buckeye Union Ins. Co. v. Liberty Solvents & Chemicals Co.*, 17 OApp3d 127, 17 OBR 225, 477 NE2d 1128.

13. (1984) Claims for damages caused by pollution which are excluded from liability insurance coverage unless the pollution is "sudden and accidental" will be covered where the damages were neither unexpected nor unintended from the standpoint of the insured: *Buckeye Union Ins. Co. v. Liberty Solvents & Chemicals Co.*, 17 OApp3d 127, 17 OBR 225, 477 NE2d 1227.

14. (1988) To the extent that a hazardous waste facility that is installed and operating pursuant to a hazardous waste facility installation and operation permit issued under R.C. Chapter 3745 performs functions, such as PCB disposal activities, that exceed the scope of its permit, R.C. § 3734.05(D)(3) does not operate to exclude the facility from township zoning provisions: OAG No.88-053.

15. (1988) A township may enforce its zoning provisions against aspects of a hazardous waste facility that exceed the scope of the hazardous waste facility's installation and operation permit, but it may not enforce such provisions in a manner that in any way alters, impairs, or limits the authority granted in the permit: OAG No.88-053.

16. (1988) When an applicant has received a permit under R.C. Chapter 3734 for the installation and operation of a hazardous waste facility on a site in a township at which such use is not permitted by existing zoning, the township is prohibited by R.C. § 3734.05(D)(3) from enforcing its existing zoning provisions: OAG No.88-053.

17. (1988) Because polychlorinated biphenyls (PCBs) are not hazardous wastes for purposes of R.C. Chapter 3745, a facility for the disposal of PCBs is not required to have a hazardous waste facility installation and operation permit issued pursuant to R.C. Chapter 3745 and is not exempted from township zoning provisions by R.C. § 3734.05(D)(3): OAG No.88-053.

18. (1988) A facility for the disposal of PCBs that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempted from township zoning provisions by R.C. Chapter 3704, R.C.